

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALLAN SOBUL,

Plaintiff,

vs.

Civ. No. 98-1362 LCS/RLP

LABOR READY, INC., a New
Mexico corporation,

Defendant.

MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION

Proposed Findings

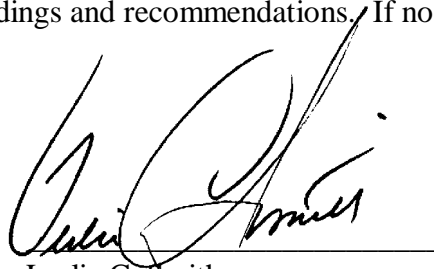
1. This matter comes before the Court upon Plaintiff's Motion for Default Judgment and Affidavit of Sum Certain, both filed on November 24, 1998. On November 4, 1998, return of service was executed upon the Defendant. Because the Defendant had not filed an answer in this case, the Plaintiff filed his Motion for Default Judgment on November 24, 1998 and mailed a copy of said Motion to the Defendant on that same date. On December 17, 1998, George Marquez entered an appearance on behalf of the Defendant. A hearing on the Motion for Default Judgment was held on January 19, 1999. Mr. Marquez was represented at that hearing. Counsel represented to the Court at that time that no further record is required to decide the Motion for Default Judgment.

2. Fed. R. Civ. P. 12(a)(1)(A) requires that the Defendant "serve an answer within 20 days after being served with the summons and complaint." Fed. R. Civ. P. 55(b)(2) also states that "[i]f the party against whom judgment by default is sought has appeared in the action, the

party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application." Fed. R. Civ. P. 55(a)(2) further provides that the court has authority "to conduct such hearings or order such references as it deems necessary and proper...." The Defendant in this case has not to date filed an answer. I, therefore, find that more than 20 days have elapsed since the Defendant was served the summons and complaint. Furthermore, I find that the Defendant was apparently aware of the Motion for Default Judgment at least three days prior to the January 19, 1999 hearing on the matter. Finally, I find that no additional hearing is necessary to decide the motion for default judgment. For all of these reasons, I find that the Motion for Default Judgment should be granted.

Recommended Disposition

I recommend granting the Motion for Default Judgment and finding the Defendant in default. I also recommend granting judgment in the Plaintiff's favor in the amount of \$28,317.75. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.



Leslie C. Smith
United States Magistrate Judge

